

**STATEMENT OF THE KERN COUNTY WATER AGENCY  
BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
CONCERNING DEVELOPMENT OF AN INTERIM DELTA PROTECTION PLAN \***

Mr. Chairman, members of the State Water Resources Control Board, I am glad to be here again, to help you develop a plan for protection of the Bay-Delta system which can be embraced by a broad spectrum of Californians and which will return control of this vital resource to the State where it belongs.

I have spoken at two earlier workshops and rather than discussing what technical, numerical standards you should ultimately adopt, my remarks have always focused primarily on what must occur for any State Board plan to gain needed broad-based support. Again, today, my statement will emphasize that component of your Bay-Delta planning.

However, the Kern County Water Agency does recognize that numerical Bay-Delta water quality, flow, and diversion standards must be adopted at the State level before we can hope to be free from Club Fed's pervasive presence. We also recognize that those standards will reduce our Agency's water supply, and that they will adversely impact the farmers and urban residents that rely on the State Water Project. With that reality firmly before us, we have been working and will continue to work with the Department of Water Resources; other Central Valley agricultural water users, both State and federal; and with statewide urban groups to jointly develop the most scientifically sound, water efficient, and comprehensive fish and wildlife standards that our current knowledge can devise. We would invite other interested groups to work with us to develop technically sound approaches.

As part of this effort, we have asked Dave Schuster and our other consultants to evaluate the technical merit of all the pending proposals. We have asked him to do this and

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\* Presented by Tom Clark, General Manager, September 1, 1994. This statement is supported by the Tulare Lake Basin Water Storage District.

support his effort because we strongly believe that no one plan presented to date represents the best plan -- the plan that you should adopt.

Dave will keep your staff informed of our progress on technical issues and we would support a continuing series of workshops or other informal sessions where the State Board members could also be kept informed on these technical subjects.

But as a matter of policy, the Kern County Water Agency can not, and will not, support any State Board adopted plan unless adoption of numerical standards is accompanied by actions that (1) insure that the ESA will not be a wild card that continues to ratchet the amount of lost water ever higher, and (2) create certainty as to the future water supply that will be available to users throughout the State. Let me elaborate on these two interrelated points.

### Certainty

To Kern County, and we believe to all California water users, certainty is a mandatory component of any Bay-Delta plan. As I stated earlier, we recognize that whatever the State Board does in these proceedings, and the water rights hearings that will follow, California's consumptive use water supplies will be significantly reduced and the economy will suffer. Given this fact, any Board decision will be unacceptable if it is treated by Club Fed, environmentalists, or anybody else as merely another floor from which the next increase in standards will be demanded.

To avoid this result, the Board's adoption of numeric quality, flow, and operational standards (the most scientifically sound, efficient, and comprehensive) must be accompanied by (1) a Board determination of how much consumptive use water will be lost if those standards are implemented, and (2) Board policies which insure that future actions by regulators will not increase that loss.

The amount of water reallocated from consumptive uses to the environment (which would vary according to year type) would be treated as a specific allocation of additional water to meet all fish and wildlife needs, including ESA requirements. Once the extent of this new allocation is known, water users will know, prior to the start of each water year, the specific obligation for fish and wildlife protection. The only variable influencing the amount of consumptive use water available will then be precipitation. This method of assuring certainty is crucial to our Agency's support of any new Delta plan. Without an early allocation, we have no certainty; and without certainty the motivation to support a plan is lost.

The serious threat to certainty is the ESA. We do not see how a new State Board plan can give us any certainty so long as the federal and State agencies that administer the endangered species acts have the ability, inclination, and/or flexibility to simply ratchet up the amount of water reallocated to the environment over that provided in a State Board comprehensive plan.

Both the Clinton and the Wilson administrations have stated that their policies are to implement the endangered species acts on a multi-species, ecosystem based approach. We believe both groups are sincere, but in reality Delta operations are currently controlled by single species approaches for winter-run salmon and Delta smelt. According to DWR, that approach is costing the SWP and CVP more than 800,000 acre feet annually (over the critical dry cycle) plus a huge additional loss occasioned by so-called "take limits."

We believe, if the State Board's comprehensive plan passes muster as good science for a multispecies plan, the ESA agencies must agree that water project operations consistent with that plan will eliminate the need for jeopardy opinions and take limits under the ESA. In addition, as to other identified "species of special concern," the fishery agencies must provide assurance that no additional quality, flow, or operational constraints, in addition to the State Board's plan, will need to be imposed to protect such species. If, in the future, in spite of these assurances, the ESA regulatory agencies mandate the reallocation of more water for listed species the Board should immediately adjust those elements of its Bay-Delta plan that are

unrelated to endangered species so that the total water allocated to fish and wildlife does not exceed that amount determined through these current proceedings.

If these steps are taken, the Board's plan shall have the certainty and shelf life that all parties have been seeking. The Board should state its intent to have its fish and wildlife water allocation remain in effect for a period of 15 years or completion of a long-term Delta solution, whichever occurs first.

As you can see, a series of actions are needed to assure that whatever technical standards are adopted a period of calm follows during which the Delta is not the center of constant battles. In addition, an acceptable Board decision should contain other important elements, some of which I have mentioned at previous workshops. In summary, some of these are as follows:

#### **Linkage To The Long-Term Solution**

Some environmental groups are already stating that whatever Delta protections are implemented through these current hearings, they should become the floor from which to move upwards when developing any long-term Federal-State Delta solution. We reject this notion and request the State Board to explicitly state that it is only adopting interim standards. We believe that long-term standards should be developed coterminous with a long-term solution. Long-term standards should objectively be based on fish and wildlife conditions existing at that time, taking into consideration the benefits to the Delta of the long-term solution.

#### **Upstream And Delta Participation**

All users that divert water tributary to the Delta contribute, in one form or the other, to Bay-Delta fish and wildlife problems. We continue to support recognition of the area of origin statutes; however, those statutes do not absolve upstream and Delta interests from

mitigating their own respective impacts. We ask the Board, therefore, to bring all parties into the process.

### **Project Flexibility**

The SWP and CVP will, as I stated above, suffer considerable shortages due to implementation the new Bay-Delta plan. These shortages must be mitigated to the maximum extent possible by building flexibility into the standards to accommodate Delta diversions for storage in groundwater basins or surface reservoirs south of the Delta. As we have investigated scientifically sound, yet efficient, Bay-Delta fishery standards, we have found generally that outflow standards are the most flexible and export constraints are the least flexible. The Board's plan should emphasize flexible approaches that will permit the SWP and CVP to move as much water as possible when it is available and least damaging to fish and wildlife resources. In addition, common points of diversion should be established for the Banks and Tracy pumping plants.

### **South Delta Facilities**

Perhaps the best way to achieve this interim flexibility is to link the State Board's decision with construction of South Delta Facilities. The four new State pumps have been installed, but enlargement of the South Delta channels and other features must be completed before those pumps can be used to their full advantage. With new Bay-Delta standards, South Delta Facilities will be even more important because the SWP will need to pump water over much shorter time periods when the impacts on the fishery are the least. These Facilities require a Section 404 permit from the Corps of Engineers and the Board should develop a linkage between its standards and South Delta Facilities so that their construction can be expedited.

## **Funding And Monitoring**

Assuming that the Board meets its objective of developing a scientifically and economically balanced plan, we see no justification for creating an environmental fund and charging water users to purchase even more water for fish and wildlife.

There will, however, be a need for, and we support, a funding mechanism for a monitoring program. We ask the Board to order a comprehensive review of all historical and existing expenditures on Bay-Delta fish and wildlife programs. We believe that many of the past and existing programs did not produce results and many have outlived their usefulness. We believe that, after the monitoring program is reviewed and revised, existing levels of funding will turn out to be more than adequate to support a program that is designed to evaluate the State Board's new standards and, if necessary, support adjustments to the standards through the Board's triennial reviews. Costs may even be reduced.

We also believe that beneficiaries other than the SWP and CVP need to participate in funding Delta monitoring activities. We ask the board to consider a funding mechanism so that these other parties can pay their fair shares.

## **Voluntary Compliance**

The Framework Agreement provides that the parties will seek voluntary compliance with a Bay-Delta plan by the CVP and SWP commencing January 1, 1995. At a previous workshop, the Board asked us to comment on this proposal.

If a technically and procedurally acceptable Bay-Delta plan is adopted, we could support the concept of voluntary compliance -- but not if the obligation rests solely on the SWP and CVP. To be successful, voluntary compliance must be as follows:

First, the regulatory agencies (EPA, NMFS, USF&WS, and CDF&G) must voluntarily comply by agreeing that the plan eliminates the need for findings of jeopardy on listed species, eliminates the need for take limits, and would protect any species of special concern. If the regulatory agencies do not agree to voluntarily comply, it would be impossible for the SWP, CVP, and upstream and Delta interests to voluntarily comply and run the risk of the new State Board standards and existing EPA and ESA requirements becoming additive.

If, as we hope they will, the regulatory agencies voluntarily comply, then we would support a program of voluntary compliance by all water users tributary to the Delta. Under this approach, the board would make an initial split of the responsibility to meet the proposed fish and wildlife allocations. The split would be between the SWP/CVP on the one hand and Delta and upstream users on the other. The Board should not determine the individual responsibilities of the SWP and CVP. That should be left to the two projects under the Coordinated Operating Agreement, CVPIA, or other interim arrangements.

The upstream and Delta share should be carefully considered in view of the area of origin laws and their responsibility to mitigate. The formula, however, should be simple.

If the division by the Board is abundantly fair, it may become the basis for an agreement among all water users that could avoid the need for a difficult and contentious water rights hearing.